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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/580,029	05/26/2000	Rohit Sharma	21216-04993	9982

7590 11/06/2003  
CIENA Corporation  
1201 Winterson Road  
Linthicum, MD 21090

EXAMINER

TON, DAVID

ART UNIT	PAPER NUMBER
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2133

DATE MAILED: 11/06/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/580,029

Applicant(s)

SHARMA, ROHIT

Examiner

David Ton

Art Unit

2133

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-21 is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☒ Claim(s) 4-6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 May 0200 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Applicant's Amendment A filed on 08/11/03 in response to Examiner's Office Action has been reviewed.
2. Applicant's arguments with respect to claims 1-3 have been considered but are moot in view of the new ground(s) of rejection.
3. Claims 1-21 are presented for examination.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3 are rejected under 35 U.S.C. § 103(a) as being unpatentable over **Chow et al.** (Chow) patent no. **5,495,471** in view of **Okuyama et al.** (Okuyama) patent no. **5,285,459** (art cited by Applicant).

#### As per claim 1:

Chow teaches the invention substantially as claimed, including a method of monitoring and restoring the performance of the network in response to the performance metric [col. 11 line 59 - col. 12 lines 68].

However, Chow does not teach decoding the data stream to determine the performance metric based on a number of transmission code violations.

Okuyama teaches a digital transmission HDB3 code violation detector [see summary of the invention]. Specifically, Okuyama disclosed in his background of the invention that in the recent CCITT recommendations G.821, the detection as a code violation of the digital transmission code is also recommended as an important item in monitoring the quality of the digital line [col. 1 lines 27-30].

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Chow and Okuyama by monitoring the number of transmission code violations as taught by Okuyama and combining it with the performance metric 1 and 2 for the network restoration algorithm as taught by Chow [see Chow col. 12 lines 26-28]. This modification would have been obvious and a person having ordinary skill in the art would have been motivated to do so because it would enhance the quality of the digital line.

As per claims 2-3:

Official Notice is taken that generating an error rate or generating a switch signal are well known in the art.

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to enhance the teachings of Chow and Okuyama by generating an error rate or generating a switch signal as a performance criteria for Chow network restoration algorithm. This modification would have been obvious and a person having ordinary skill in the art would have been motivated to do so because it would enhance the quality of the digital line.

*Allowable Subject Matter*

6. Claims 4-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 7-21 are allowed.

*Conclusion*

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Ton, whose telephone number is (703) 306-3043. The examiner can normally be reached Monday through Thursday from 6:30 AM to 4:00 PM and alternate Friday from 6:30 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert DeCady, can be reached at (703) 305-9595.

Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to: (703) 872-9306

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Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,  
Arlington, VA., Sixth Floor (Receptionist).

A handwritten signature in cursive script, appearing to read "David Ton".

dt

October 30, 2003

**DAVID TON**  
**PRIMARY EXAMINER**